

DRAFT

PROGRAMMATIC AGREEMENT

**AMONG THE
U.S. DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT
ADMINISTRATION,
THE
HAWAI'I STATE HISTORIC PRESERVATION OFFICER,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**REGARDING
THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
IN THE
CITY AND COUNTY OF HONOLULU, HAWAI'I**

WHEREAS, the City and County of Honolulu (City) Department of Transportation Services (DTS) is proposing the Honolulu High-Capacity Transit Corridor Project (Project) on O'ahu and is seeking financial assistance from the U.S. Department of Transportation Federal Transit Administration (FTA) for the Project, which is therefore a Federal undertaking subject to Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and its implementing regulation at 36 CFR 800; and

WHEREAS, the proposed Project is an elevated, electrically powered, fixed-guideway transit system in the east-west travel corridor between East Kapolei and the Ala Moana Center with an approximate length of twenty (20) miles and twenty-one (21) stations; and

WHEREAS, the City has adopted this Programmatic Agreement through Resolution _____; and

WHEREAS, pursuant to 36 CFR 800, the FTA has consulted with the State Historic Preservation Division (SHPD) for Hawai'i and the following parties:

- U.S. Navy (U.S. Naval Base Pearl Harbor)
- Historic Hawai'i Foundation
- National Park Service (NPS)
- National Trust for Historic Preservation
- University of Hawai'i Historic Preservation Certificate Program
- American Institute of Architects
- Hawai'i Community Development Authority
- Office of Hawaiian Affairs
- O'ahu Island Burial Council
- Hui Malama I Na Kupuna O Hawai'i Nei
- Royal Order of Kamehameha
- The Ahahui Ka'ahumanu

- The Hale O Na Ali‘i O Hawai‘i
- The Daughters and Sons of the Hawaiian Warriors
- Association of Hawaiian Civic Clubs
- Ali‘i Pauahi Hawaiian Civic Club
- Ka Lei Maile Ali‘i Hawaiian Civic Club
- King Kamehameha Hawaiian Civic Club
- Nanaikapono Hawaiian Civic Club
- Hawaiian Civic Club of Wahiawa
- Ahahui Siwila Hawai‘i O Kapolei Hawaiian Civic Club
- Waikīkī Hawaiian Civic Club
- Princess Kaiulani Hawaiian Civic Club
- Waianae Hawaiian Civic Club
- Merchant Street Hawaiian Civic Club
- Prince Kuhio Hawaiian Civic Club
- Pearl Harbor Hawaiian Civic Club
- Hawaiian Civic Club of ‘Ewa-Puuloa
- Kalihi-Palama Hawaiian Civic Club
- Hawaiian Civic Club of Honolulu; and

WHEREAS, the public and consulting parties have been afforded the opportunity to consult and comment on the Project; and

WHEREAS, the FTA, the Advisory Council on Historic Preservation (ACHP), and the State Historic Preservation Officer (SHPO) are signatories to this Programmatic Agreement (PA); and

WHEREAS, the City, and the NPS are invited signatories to this PA; and

WHEREAS, all consulting parties were invited to be concurring parties to this PA if they choose; and

WHEREAS, the FTA, in consultation with the Hawai‘i SHPD, has defined the undertaking’s Area of Potential Effects (APE) as described in Attachment A; and

WHEREAS, the City has included minimization and avoidance measures during project design, including but not limited to, narrow guideway design, route selection, station location selection, and contained station footprints, to avoid and minimize impacts on historic resources; and

WHEREAS, all built components will follow the Project’s *Design Pattern Guidebook*; and

WHEREAS, consulting parties and the public are able to comment on station design and

transit-oriented development issues at neighborhood design workshops; and

WHEREAS, the City has implemented zoning “overlay districts” to preserve individual and groupings of historic and cultural resources, including application of architectural and other design guidelines and standards for developments surrounding them; and such overlay districts are already established for Chinatown and the Hawai‘i Capital (civic center) areas; and

WHEREAS, Ordinance 09-04 requires the establishment of transit-oriented development (TOD) overlay zoning districts around every transit station, and this Ordinance continues the commitment to protect and enhance historic and cultural resources by requiring the identification of important historic and cultural landmarks in the area, the establishment of controls to protect and enhance these resources, and encouraging adjacent development to reflect the cultural and historic context of the station area; and

WHEREAS, the FTA, in consultation with the Hawai‘i SHPD, has determined that proposed Project would have an adverse effect on historic resources listed in the National Register of Historic Places (NRHP) or eligible for listing in the NRHP; and

WHEREAS, the FTA in consultation with the SHPD has determined that the following resources will receive adverse effect determinations: Hono‘uli‘uli Stream Bridge; Waikele Stream Bridge and Span over OR&L Spur; 1932 Waiawa Stream Bridge; Waimalu Stream Bridge; Kalauao Spring Bridge; Kalauao Stream Bridge; United States Naval Base, Pearl Harbor National Historic Landmark (NHL); CINCPAC Headquarters Building NHL; Makalapa Navy Housing Historic District; Ossipoff’s Aloha Chapel, SMART Clinic, and Navy-Marine Corps Relief Society; Hawai‘i Employers Council; Afuso House; Higa Fourplex; Teixeira House; Lava Rock Curbs; Six Quonset Huts; Kapalama Canal Bridge; True Kamani Trees; Institute for Human Services/Tamura Building; Wood Tenement Buildings; Oahu Rail & Land Co. Office and Document Storage Building; Oahu Rail & Land Co. Terminal Building; Nu‘uanu Stream Bridge; Chinatown Historic District; Merchant Street Historic District; DOT Harbors Division Offices; Pier 10/11 Building; Aloha Tower; Irwin Park; Walker Park; HECO Downtown Plant; Dillingham Transportation Building; and Mother Waldron Playground.

WHEREAS, this adverse effect determination results from both direct and indirect effects; and

WHEREAS, in accordance with 36 CFR 800.10, FTA has notified the Secretary of the Interior of its adverse effect determination to the United States Naval Base, Pearl Harbor NHL and the CINCPAC Headquarters Building NHL, and as a result, the NPS has been designated to participate formally in the consultation; and

WHEREAS, the Project will cross lands administered by the Federal Government and is subject to an approval of that crossing by the applicable Federal agencies; and

WHEREAS, the Project is subject to the Native American Graves Protection and Repatriation Act (NAGPRA) where it crosses lands administered by the Federal Government; and

WHEREAS, the FTA has determined that the Project may affect significant archaeological resources listed in or eligible for listing in the NRHP; and

WHEREAS, this PA was developed with appropriate public involvement pursuant to 36 CFR 800.2(d) and 800.6(a), and the public was provided opportunities to comment on the Project and its adverse effects; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), FTA has notified the ACHP of its adverse effect determination with the required documentation, and the ACHP has chosen to participate formally in the consultation; and

WHEREAS, the FTA and the SHPD have agreed that a phased approach to identification and evaluation of archaeological sites is appropriate, pursuant to 36 CFR 800.4(b)(2); and

WHEREAS, any future extensions that are undertaken as a federal action would receive independent review under the National Environmental Policy Act and Section 106, and the review would be guided by the approaches to treatment of historic properties being undertaken by this project; and,

WHEREAS, unless defined differently in this PA, all terms are used in accordance with 36 CFR 800.16; and

WHEREAS, all actions described herein are subject to applicable State and Federal law; and

NOW, THEREFORE, FTA, ACHP, the City, and the Hawai'i SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties.

STIPULATIONS

The FTA will ensure that the terms of this PA are carried out and will require, as a condition of any approval of Federal funding for the undertaking, adherence to the stipulations set forth herein.

I. Roles and Responsibilities

- A) FTA Responsibilities - In compliance with its responsibilities under the National Historic Preservation Act (NHPA), and as a condition of its funding award to the City of Honolulu under 49 U.S.C. § 5309 and any other subsequently identified Federal funding, FTA will ensure that the City and

County of Honolulu carry out the stipulated provisions of 36 C.F.R. Part 800 and applicable Council policy statements and guidelines subject to this agreement.

- B) SHPD Responsibilities - The SHPD shall specifically review and provide comments for work products completed as part of Stipulations II, III, V, VI, VII, and VIII. The SHPD and other agencies will have 30 days to review and comment on these submissions, unless state law allows for an extended period of time beyond 30 days.

C) ACHP – The ACHP shall determine if the measures set forth in this PA are met to acceptable standards, thus fulfilling FTA’s Section 106 requirements.

- D) City Responsibilities - The City shall represent the interests of FTA and coordinate all governance activities described in the PA to fulfill the contents described in the stipulations below. The City will consult with the SHPD and other agency staff, as appropriate, in planning and implementing the stipulations of this PA. The City shall report all plans and documents required by this PA in a timely and accurate manner to the SHPD and other agencies, as appropriate, for review. The City shall also ensure that all technical solutions developed by the City and as a result of consultation are compliant with government-wide policies and regulations.

- E) Qualifications of Personnel - All work required to fulfill Stipulations II, III, V, VI, and VIII shall be conducted by cultural resources professionals (i.e., historians, architectural historians, and/or archeologists, as appropriate) who meet the Secretary of the Interior’s Professional Qualification Standards.

- F) The City shall include an architectural historian on the Project through the completion of Project construction. The historian shall oversee completion of the elements of this PA, coordinate with the SHPD regarding the elements included in this PA, and coordinate with the Department of Planning and Permitting regarding land use planning activities, including the integration of transit oriented development with historic preservation, in the vicinity of project stations.

II. Traditional Cultural Properties

- A) The City shall undertake a study to determine the presence of Traditional Cultural Properties (e.g., Chinatown, sites associated with pre-settlement Hawaiian practices) within the APE. The City shall meet with the SHPD and concurring parties with demonstrated Native Hawaiian interests to discuss potential Traditional Cultural Properties (TCP), as defined by the NRHP. The City shall undertake studies to identify TCPs that are eligible for the NRHP and complete effects determinations and identification of mitigation, if necessary, prior to undertaking substantial construction. The TCP studies will follow National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. The City will complete NRHP nominations for properties that meet the criteria for TCPs. The SHPD, NPS, and concurring parties with a related and demonstrated interest in each TCP

will review draft NRHP nominations and provide comments within 30 days of receipt. The City will consider all comments when completing final NRHP nominations.

III. Identification and Protection of Archaeological Sites and Burials

The City shall implement the following archaeological stipulations before each construction phase. The four construction phases are described in Stipulation XII.B.

A) Initial Planning

1. The APE for archaeological resources is defined as all areas of direct ground disturbance. This APE for archaeology includes any areas excavated for the placement of piers to support the elevated structures, foundations for buildings and structures, excavations for utility installation, grading to provide parking, or other construction-related ground disturbance including preparation of construction staging areas. The APE includes the new location of any utilities that will be relocated by the Project.
2. The City shall develop an Archaeological Inventory Survey Plan (AISP) within the APE for each construction phase and shall submit it to the SHPD. The AISP shall follow the requirements of Hawai‘i Administrative Rules, Title 13, Subtitle 13, Chapter 276. The AISP shall be subject to approval by the SHPD.
3. The O‘ahu Island Burial Council (OIBC) will have jurisdiction to determine preservation or relocation of previously identified Native Hawaiian burial sites. All applicable state laws stipulated in the Hawai‘i Revised Statutes, Chapter 6E and Hawai‘i Administrative Rules, Title 13, Subtitle 13, Chapter 300 shall apply. Any iwi kupuna (burials) discovered during the Archaeological Inventory Survey shall be treated as previously identified burial sites.

B) Fieldwork: The City shall conduct archaeological fieldwork as presented in the AISP. For each construction phase, the archaeological fieldwork shall be completed in advance of the completion of final design so that the presence of any sensitive archaeological sites/burials discovered during fieldwork can be addressed during final design. Fieldwork for Construction Phase 1 shall be completed prior beginning construction of that phase. Assuming that the Project maintains the schedule outlined in Stipulation XII.B, fieldwork for Phase 2 shall be completed in 2010 and for Phases 3 and 4 by the end of 2011. Fieldwork required by the AISP shall include, but not be limited to, the following:

1. Reconnaissance survey (archival research and visual inspection by pedestrian inventory) within the APE, and

2. Within the area of greatest potential for resources, between Nu‘uanu Stream and Ala Moana Center (the Koko Head terminus for the project), the archaeological fieldwork will evaluate all areas that will be disturbed by the Project. The evaluation will include a review of historical shoreline location, soil type, and, where indicated by conditions, the survey measures listed in the remainder of this sub-section (B),
3. A sample survey of subsurface conditions with ground-penetrating radar (GPR), and subsurface inspection as warranted,
4. A subsurface testing regime for locations identified in the AISP,
5. Archaeological methods specific and applicable to the findings will be used in analysis, and
6. A report summarizing the results of the field work and analysis that shall be submitted to the SHPD for approval.

C) Treatment Plans: The City, in coordination with the OIBC, will develop a general approach for the burial treatment plan for each phase of construction. Based on the results of the archaeological inventory survey fieldwork and in consultation with the SHPD, the City shall develop a specific treatment plan according to the applicable state laws including Hawai‘i Revised Statutes, Chapter 6E and Hawai‘i Administrative Rules, Title 13, Subtitle 13, Chapter 300 for each construction phase. Treatment plans shall be submitted to the SHPD for approval. Upon approval by the SHPD, the City shall implement the treatment plan.

D) Mitigation Plans: Subsequent to the archaeological fieldwork and implementation of the treatment plan, the City, in consultation with the SHPD, shall develop mitigation plans as appropriate. The mitigation plans may include the following:

1. Archaeological Monitoring Plan

The City shall develop an archaeological resources monitoring plan specifying the locations within the construction area that require a monitor and describing the level of monitoring necessary. The monitoring plan will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (*Federal Register*, Vol. 48, No. 190, page 44738-9).

The City shall develop a follow-up monitoring report for the Project and shall submit it to the SHPD for approval. The monitoring report, if it contains the location and description of human burial remains discovered during the course of the Project, shall remain confidential. Precise locational data may be provided in a separate confidential index. The monitoring report for the construction phase of the Project shall be submitted by the City to the SHPD no later than 90 days after the completion of construction of that phase.

2. Burial Treatment

The City shall prepare burial treatment documents (that may include Burial Treatment Plans, a Burial Site Component of a Data Recovery Plan, and a Burial Site Component of a Preservation Plan) and shall submit the documents to the SHPD for review and approval. The document shall also be submitted to the OIBC, which will determine whether preservation in place or reburial will occur, as stated in HAR 13-300-33. Any human remains found on lands owned or administered by the Federal government will be addressed in accordance with NAGPRA in coordination with the affected land management agency.

The City confirms that guideway columns may be relocated a limited distance along the guideway at most column locations, straddle-bent supports may be used, or special sections developed to modify span length allowing for preservation in-place to be viable in those locations. If the OIBC determines that a burial(s) is to be relocated, the City will consult with the OIBC to determine appropriate relocation, which may include relocation to Project property in the vicinity of the discovery.

3. Data Recovery Programs (Applicable to Construction Phases 1, 2, and 3)

- a. Data Recovery Programs (including Data Recovery Plans and Data Recovery Reports) will be prepared as appropriate in consultation with the SHPD. Data Recovery Programs shall be submitted for review and approval by the SHPD.
- b. Whenever possible, technological means will be used to avoid potential human remains and archaeological resources to minimize disturbance.
- c. Completion of data recovery work must be verified by the SHPD prior to initiation of construction within the area of these sites.
- d. Data recovery plans specify the disposition of recovered objects and shall be submitted by the City to the SHPD for review and approval.

E) Curation. The City will curate recovered materials in accordance with Hawai'i Administrative Rules, Title 13, Subtitle 13, Chapter 278. The City shall consult with public and private institutions to pursue an opportunity to provide public access to the recovered materials. Interpretive materials as described in Stipulation VIII of this agreement at one or more stations may incorporate archaeological materials recovered during development of the Project.

F) The City shall consult with the OIBC to develop an approach for consultation regarding any iwi kupuna discovered during the archaeological inventory survey. The City, in coordination with the OIBC, shall complete a draft approach for OIBC review within six months of FTA's approval of project entry into final design. The approach shall address at minimum a process for

communication of any discoveries, definitions that will be applied to the Project, identification and inclusion of lineal and cultural decedents, and workflow of actions prior to and upon discovery of iwi kupuna during archaeological inventory survey. The workflow shall consider both avoidance evaluation to allow for preservation in place and reinternment options.

IV. Design Standards

A) The City shall adhere to the standards set forth in the follow the Project's *Design Pattern Guidebook*, as appropriate, for all elements covered in this Programmatic Agreement.

B) The City shall notify all consulting parties of station design workshops in which they may participate.

C) The City shall provide 30% design plans for built components of the project, such as stations, guideway, and directly related project infrastructure improvements, to the SHPD for review and comment. The SHPD shall provide the City with comments on the plans within 30 days of the agency's receipt. If no comments are received within 30 days, the City will assume that the SHPD has no comment. The City shall consider all comments provided by the SHPD when revising or completing designs.

V. Recordation and Documentation

A) The City shall complete Historic Context Studies related to relevant historic themes within the APE. This type of study assists in documenting the history of the affected area and may be used in developing NRHP nominations for historic resources in the area. The City will consult with PA signatories and concurring parties to determine relevant themes to be studied and scope topics and methodology. The City shall submit draft reports to the SHPD for review and comment within 30 days of submittal and the City shall consider all comments during the final phase of report completion. Initial field work and photography for each study theme shall be completed prior to undertaking substantial construction in relevant geographic areas. Historic Context Studies shall consist of a historical narrative supplemented by relevant photographs, maps, and other materials. Copies of this documentation shall be distributed to repositories listed in Stipulation XII.D. Professional photographs will be used to illustrate these documents.

B) The City shall complete Cultural Landscape Reports (CLR) related to historic resources along the study corridor. The City shall consult with PA signatories and concurring parties to determine cultural landscapes to be studied, project approach, and methodology. The City shall submit draft reports to the SHPD and NPS for review and comment within 30 days of submittal and the City shall consider all comments during the final phase of report completion. Initial field work and photography for each study area shall be completed

prior to undertaking construction in that area. All work shall follow National Park Service guidance and standards, as appropriate, including National Register Bulletin 30, *Guidelines for Evaluating and Documenting Rural Historic Landscapes* and National Register Bulletin 18, *How to Evaluate and Nominate Designed Landscapes*, as well as relevant information presented in *Guidelines for the Treatment of Cultural Landscapes*. Copies of this documentation shall be distributed to repositories listed in Stipulation XII.D.

C) Historic American Building Survey and Historic American Landscape Survey Recordation

1. The City shall consult with NPS staff to determine resources that should be documented for Historic American Building Survey (HABS) and Historic American Landscape Survey (HALS) recordation. All resources that received adverse effect determinations will be considered for HABS or HALS documentation. For resources that will be documented according to HABS and HALS standards, a professional photographer will complete large-format, black-and-white, archival photography. This documentation shall be completed prior to any pre-construction or construction activities to the resource in a manner that allows for HABS/HALS to review it prior to any physical changes to the above properties. Copies of any documentation generated under this stipulation will be offered to the SHPD in addition to original photographic prints.
2. The City shall engage a professional photographer to complete large-format, black-and-white, archival photography for all resources that received adverse effect determinations that are not subject to HABS or HALS documentation under Stipulation II.A. Photographic documentation will include, at a minimum, representative views of relevant historic structures associated with each historic property, and representative views of the surrounding setting of each historic property. These photographs will be offered to the repositories listed in Stipulation XIII.G. Additionally, the City shall consult with the SHPD to determine an appropriate level of written documentation for each resource that is not documented under Stipulation II.A. The SHPD will review this documentation upon completion. The fulfillment of Stipulations II.A and II.B will ensure that all adversely affected resources are documented using large-format photography.

D) The City shall have digital photographs taken by a professional photographer, in conjunction with the input of a supervising architectural historian, to document select resources and viewsheds within the APE. These photographs shall be taken prior to construction commencement and shall be used for interpretive materials, publications, cultural landscape reports, and historic context studies. Photographs will focus on NRHP-eligible resources and unique landscape features. Approximately 150 views will be submitted. These photographs will remain in possession of the City with copies submitted to the SHPD.

- E) The City also shall take a comprehensive video of the project corridor prior to construction commencement. Video documentation shall be completed by a professional videographer and will consist of unedited footage filmed from a moving vehicle. The project corridor shall be filmed from the vehicle in each direction, from Ala Moana to ‘Ewa, and ‘Ewa to Ala Moana. This film will remain in the possession of the City with a copy submitted to the SHPD.

VI. National Register of Historic Places/National Historic Landmark Nominations

A) The City shall complete a NRHP Multiple Property Submission (MPS), including all appropriate accompanying documentation such as photographs and mapping, for resources to be defined during scoping that are related to Modern and Recent Past Architecture in Honolulu/O‘ahu dating from 1939-1979 (with Criteria Consideration G applying as appropriate). These resources will be selected by the City in consultation with the PA signatories and concurring parties from the pool of NRHP-eligible properties within the project’s APE or vicinity. These properties will also be nominated to the Hawai‘i Register. The City shall submit draft reports to the SHPD and NPS for review and comment within 30 days of submittal and the City shall consider all comments during the final phase of completion.

B) Pending the U.S. Navy providing access to the site and relevant records, the City shall complete an update to the Pearl Harbor National Historic Landmark (NHL) nomination. Emphasis shall focus on those resources closest to the APE and to those not previously mentioned in prior documentation. All work shall follow the guidelines set forth in *How to Prepare National Historic Landmark Nominations*. The City shall submit a draft document to the NPS and SHPD, who will review and provide comments within 30 days. The City shall consider all comments in the final NHL nomination.

C) National Register Nominations

1. The City shall complete NRHP nominations for the 33 adversely affected properties located along the project corridor. Nominations for properties already listed in the National Register will be updated and/or amended. All work shall conform to guidance presented in relevant National Register Bulletins. The City will complete all appropriate accompanying documentation such as photographs and mapping. All nomination forms will be submitted to the SHPD for their review and comment within 30 days. The City will submit revised versions that consider the City’s comments to the City will complete the nomination forms before the project begins revenue service operations. The City will submit all nominations to the SHPD for forwarding to the NRHP following the established procedures of the National Park Service (36 CFR 60.6(g)).
2. Resources included in the Multiple Property Submissions required by Stipulation VI.A will not be documented independently. The City and

SHPD will consult with property owners to ensure that access will be permitted and that owners consent to the proposed listing. All properties will also be nominated to the Hawai'i Register.

3. All NRHP and Hawai'i Register nominations will follow the procedures set forth in Hawai'i Revised Statutes, Chapter 6E and Hawai'i Administrative Rules, Title 13, Subtitle 8, Chapter 198, as appropriate. Completion of the stipulated National Register of Historic Places nominations does not guarantee listing should the Keeper of the National Register of Historic Places determine that the properties are not eligible for listing.
- D) The City shall develop a searchable database of historic properties (i.e., those listed in or eligible for listing in the NRHP) within the APE. The database will include an interactive geographic component and include property information (e.g., property name, address, tax map key, construction date, architect, etc.). The City will initiate database development prior to construction commencement and will update, and maintain this database for the project's duration. The City will add links to the documentation included in Stipulations II, V, VI, and VIII to the website as it is approved by the appropriate review agency. Culturally sensitive materials related to Stipulation XI will not be posted. The City will make this database and its information available to any organization with the authority and ability to develop, maintain, and support a public research database at the end of construction.

VII. Interpretive and Educational Programs, Materials, and Signage

- A) The City shall complete an interpretive plan for the Project area and install interpretive signage at appropriate locations. The interpretive plan will highlight historical themes (e.g., Native Hawaiian History, Native Hawaiian Culture, Immigrant History, Plantation Culture, Architecture, Government, Agriculture, Transportation, Military, etc.) and will interpret each one of these themes at an appropriate station location. Interpretive signage will be installed at or near relevant transit stations and, where appropriate, inside transit vehicles. Signatories and concurring parties will participate in a kick-off meeting and the SHPD will review the draft materials and approve the final version.
- B) The City shall complete a color brochure describing the history of the area along the transit line. The signatories and concurring parties may participate in a kick-off meeting at the onset of work and the SHPD will review the draft document. All materials shall also be produced in a digital format for electronic and/or online distribution. Upon completion, 1,000 physical copies of the product shall be provided.
- C) The City shall prepare materials for children, such as a coloring book or child-friendly game that would educate children about relevant local history. The materials shall be prepared by professional historians and a professional illustrator. The City shall approach island schools to propose and develop the

content for the materials. All materials shall also be produced in a digital format for electronic and/or online distribution. The materials will be available on the project website.

- D) The City shall establish a Humanities Program that will explore human histories, cultures, and values. This program will enhance visitor and resident exposure to the depth of history and culture in the vicinity of the Project. The Humanities Program will educate the public about important topics in Hawaiian history through conferences/seminars, research fellowships, media programs, exhibits, lectures, and publications. The City and concurring parties will consult to develop this program and the City will provide \$ [REDACTED] to fund this program.

VIII. Mitigation of Specific Resources

- A) All lava rock curbstones removed along the edges of pavement because of Project-related work shall be retained by the City for reuse and reinstallation. The stones will be marked prior to removal, stored securely, and replaced at their approximate original mile-point locations. Any stones that are damaged or destroyed during extraction or reinstallation shall be replaced with in-kind materials.
- B) When substantial improvements are made to bridges, the bridges must be improved to current safety standards. The bridge rails on the Kapalama Canal Bridge do not meet current standards; therefore, they must be replaced or retrofitted to meet current safety standards. The City will maintain or replace the rails matching the current look of the existing rails for viewers off of the bridge and looking towards the bridge.
- C) The City will replace true kamani trees within the corridor as close as feasible to the current location of the group of 28 true kamani trees on the makai side of Dillingham Boulevard that will be adversely affected.
- D) Improvements to Adversely Affected Parks.
1. With the assistance of the State of Hawaii and the concurring parties, the City shall produce and implement a plan for the improvement, restoration, and enhancement of Adversely Affected Parks.
 2. Project funds in the sum of \$500,000 shall be budgeted for parks improvements. Should the conferees determine that circumstances preclude improving these parks, project funds budgeted for parks shall be transferred for use to the Honolulu High-Capacity Transit Corridor Project Historic Preservation Committee.

IX. Measures to Address Reasonably Foreseeable Indirect and Cumulative Effects Caused by the Project

- A) Throughout the duration of the Project, the City shall investigate, and as feasible, establish new programs to protect and enhance historic and cultural resources within the APE, which complement existing city programs.

Specifically, the Project architectural historian shall at minimum, assist in the investigation of a city “Main Street” program, the establishment of a certified local government program, and a transfer development rights (TDR) program for the purpose of promoting the viability, reuse, rehabilitation, restoration, and/or preservation of historic resources within TOD overlay zoning districts.

- B) The City, in consultation with the PA signatories and concurring parties, shall create, chair, and provide technical, administrative, and financial support for the operation of a Honolulu High-Capacity Transit Corridor Project Historic Preservation Committee (“HPC”). The City will create and schedule the first meeting of the HPC within three months after **FTA approval of preliminary engineering for the Project**. Prior to the creation of the HPC, the City will submit to the SHPO for approval, a list of the agencies, groups, and organizations that will be invited to be represented and serve on the HPC. The HPC shall be comprised of the following seven members: the director of DTS, or his designee, to serve as a voting member and chair of the HPC; one representative, or its designee, from each of the following: the office of the SHPO, RTD, and DPP; and one representative each from three (3) groups or organizations with expertise in historic preservation, architecture, planning, or landscape architecture. The HPC shall establish the goals, criteria, program guidelines, administrative procedures, and funding distribution for the disposition of \$1 million that will be provided by the City for exterior improvements to eligible or listed historic properties (including contributing resources within historic districts) within the Project’s APE consistent with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* accomplished through grants provided under this section. The HPC shall identify and select an entity or entities that will administer the funds for the purposes established based on established City criteria.
- C) In consultation with Hawai‘i SHPO and other consulting parties, the City and County will develop and implement an educational effort to encourage the rehabilitation of historic properties located along the transit route. This effort will include information about proper rehabilitation practices; benefits of historic designation; financial incentives available for eligible properties; and existing resources for assistance in pursuing these options. The City will hold meetings and/or public workshops with owners of historic properties to disperse this information. At the conclusion of the consultations and workshops, the City will submit a report on the effort to the Hawai‘i SHPO and other consulting parties.
- D) The City will develop an educational field guide of the historic properties (including historic districts) along the transit route. The field guide will be developed in consultation with Hawai‘i SHPO and other consulting parties, and the final draft will be submitted to Hawai‘i SHPO for review and concurrence. The City will make the field guide available to the public in both

print and electronic formats. The field guide will be completed and available before revenue service operations begin.

X. Construction Protection Plan

- A) Before project construction begins, the City shall develop a construction protection plan in consultation with FTA and the SHPD detailing all measures to protect historic properties from physical damage during project construction. Protection measures shall be clearly identified in construction documents. The City will include the construction protection plan within specific contract packages to inform contractors of their responsibilities relative to historic properties. Copies of the construction protection plan will also be provided to concurring signatories. The construction protection plan will establish protection measures and procedures and provide for inspection and documentation of existing conditions at the historic properties directly adjacent to project construction activities that may impact them.
- B) As a part of the construction protection plan, during final design, the City, in cooperation with its contractors, will create and carry out a Construction Noise and Vibration Mitigation Plan using and all of the mitigation measures defined in the FEIS. Numeric limits and monitoring measures will be developed to minimize noise and vibration impacts.
- C) Before project construction begins, the City shall meet with the construction contractor(s) to review the construction protection plan and convey its importance.
- D) The City will monitor project construction to ensure that the measures in the construction protection plan are implemented and shall provide a record of monitoring activities in progress reports prepared pursuant to Stipulation XII.C.
- E) The City shall complete post-construction noise monitoring as stipulated in the Final Environmental Impact Statement within U.S. Naval Base, Pearl Harbor National Historic Landmark.

XI. Post-Review Discoveries

- A) While post-review discoveries are not anticipated for built resources, the City agrees to cease all work in the vicinity of the discovery should another potential historic built resource be discovered or an unanticipated adverse effect on a historic built resource be found. The City will begin the consultation process with the signatories and resolve any adverse effects in accordance with Section 106 of the National Historic Preservation Act. The FTA will not allow work to resume in the vicinity of the discovery APE until the adverse effects have been resolved through an amendment of this PA or by other means consistent with 36 CFR 800.

- B) This PA identifies all reasonably foreseeable effects caused by the Project to historic properties within the APE. Should any Signatory identify potential additional reasonably foreseeable effects of the Project after the execution of this PA, the FTA shall determine if the identified effect constitutes an adverse effect and shall request concurrence of the finding from the SHPD and consult with the Signatories to determine appropriate mitigation commensurate to the effect.
- C) While post-review archaeological discoveries after completion of AISs are not anticipated, any archaeological sites/burials discovered during construction will be treated according to HRS 6E-43.6. In the event human skeletal remains are inadvertently discovered, any activity in the immediate area that could damage the remains or the potential historic site shall cease until the requirements of the law have been met.
- D) In the event of any inadvertent discoveries of burials, the OIBC shall be included in consultation as specified in HAR 13-300-40. When suspected human skeletal remains are found, all work in the vicinity must stop and the archaeologist must secure the area to avoid any additional disturbance. With confirmed human skeletal remains the archaeologist must notify the OIBC, SHPD, the County Coroner's Office, and the County Police Department. With all inadvertent burial finds, SHPD determines burial treatment, either preservation in place or relocation, in consultation with the land owner, the district representative of the OIBC, and any recognized cultural or lineal descendants for the project. By law, SHPD has one day to make its treatment determination for single burials and two days for multiple burials found on Oahu. Construction must remain halted in the vicinity of the burial find until SHPD's treatment decision has been carried out. For preservation in place, typically the planned construction is modified to allow for the remains to stay in place in an appropriate and relatively undisturbed manner. For relocation, typically the remains are disinterred and curated either on the project site, or at SHPD's repository, until the project is completed and reinterment is arranged within the project area. Less commonly, for relocation, the remains are disinterred and immediately reinterred within the agreed upon burial relocation site. Burial treatment is documented in either a "burial site component of an archaeological data recovery plan" for burials that are relocated, or a "burial site component of an archaeological preservation plan" that documents the burial treatment that was carried out. These plans/reports document the conditions of the discovery, the burial treatment, and any subsequent measures that have been agreed to by the land owner to safeguard either the relocation site or the preserve site. Preserved or relocated burial sites are recorded with the Bureau of Conveyances so that the burial sites are not further disturbed in the future.

XII. Public Involvement

- A) To keep the public informed about PA implementation, the semi-annual progress reports described in Stipulation XII.C will be posted on the Project website.

- B) The City shall add all documentation completed as part of this PA that does not contain sensitive information or locations to the historic resources database that will be created as part of Stipulation V.D.
- C) The City will notify all PA signatories and concurring parties if a member of the public objects to any mitigation completed as part of this PA. The signatories and concurring parties will provide the City with any comments on the objection within 30 days. The City will consider these comments when responding to the member of the public.

XIII. Administrative Provisions

- A) **Dispute Resolution:** Should any party to this PA object to any action proposed pursuant to the PA, the FTA shall consult with the objecting party to resolve the objection. If the FTA determines that the objection cannot be resolved, the FTA shall forward all documentation relevant to the dispute, including FTA's proposed resolution, to the ACHP.
 - 1. Within 30 days after receipt of all pertinent documentation, the ACHP is expected to provide the FTA with its advice on the resolution of the objection. FTA will then prepare a written response that considers any timely advice offered by the ACHP or by other signatories to the PA. FTA will provide all consulting parties with a copy of this written response and then proceed according to its final decision.
 - 2. If the ACHP does not provide its advice regarding the dispute within 30 days of receiving appropriate documentation about the dispute, FTA may make its final decision on the dispute and proceed accordingly. Prior to reaching a final decision, FTA shall prepare a written response that considers any timely comments by other signatories to the PA and provide them and the ACHP with a copy of that response.
 - 3. The responsibility of the FTA and the City to carry out all actions that are required by this PA and are not affected by the dispute remains unchanged.
- B) **Effective Date, Timing, and Duration**
 - 1. **Effective Date:** This PA shall be effective upon signing of the PA and shall be considered in full force and effect until replaced by a future agreement, or until the stipulations of the PA have been fully implemented. Once the Project, including the stipulations of this PA, has been completed, this PA shall terminate by its own course without the necessity of further action by any of the signatories to this PA. Project implementation is anticipated to be complete by the end of 2018.
 - 2. The timing of activities listed in this PA are estimated based on groundbreaking for the first construction phase in 2009, substantial

construction of the first construction phase and FTA granting approval to enter Final Design in 2010, and FTA signing a Full-Funding Grant Agreement during 2011.

The Project is anticipated to be completed in four construction phases: Phase 1: East Kapolei to Pearl Highlands, Phase 2: Pearl Highlands to Aloha Stadium, Phase 3: Aloha Stadium to Middle Street, and Phase 4: Middle Street to Ala Moana Center. Phase 1 will be built as a design-build project with design work beginning in 2009. Phase 2 is anticipated to begin construction in 2011, Phase 3 in 2012, and Phase 4 in 2013. Substantive construction is anticipated to be complete during 2018.

3. Duration: Stipulation III shall be initiated within three months of the date of execution of this PA and shall be completed before substantive construction in the vicinity of the resource begins. Other documentation as stipulated in this PA will be completed within eight years. Ongoing archaeological monitoring related to construction will remain in place until construction of the Project as outlined in the associated Final Environmental Impact Statement, is completed. Should all parties deem a time extension of this PA appropriate, such extension will be treated as an Amendment under Stipulation XII.I.

C) Monitoring and Reporting

1. Any signatory to this PA may request, at any time, a review of the implementation of the terms of this PA.
2. Every six months following the execution of this PA, until it expires or is terminated, the City shall provide all signatories to this PA a summary report detailing the work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received during efforts to carry out the terms of the PA.

Execution of this PA by FTA and the SHPO, FTA's filing of the executed PA with the ACHP prior to FTA's approval of a construction grant for the Project, and implementation of its terms are evidence that FTA has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment.

This PA and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this PA. No waiver, consent, modification, or change of terms of this PA shall bind either party unless in writing and signed by all signatories and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific

instance and for the specific purpose given. The failure of FTA to enforce any provision of this PA shall not constitute a waiver by FTA of that or any other provision.

- D) Work products not containing sensitive information will be submitted to the following repositories so that the information generated is made available to the public: SHPD, State Publications Distribution Center (15 copies), University of Hawai‘i, and the Municipal Reference Library (3 copies).
- E) Post-Record of Decision Discoveries: Any unanticipated cultural resources discoveries not covered in other sections of this Programmatic Agreement that are revealed after the Record of Decision is issued will be subject to the Section 106 process.
- F) FTA shall ensure that any inadvertent damage resulting from the Undertaking to properties listed in or eligible for listing in the National Register of Historic Places or those that are contributing resources of eligible or listed districts shall be repaired, to the extent possible, in accordance with the Secretary of the Interior’s Standards for Rehabilitation.
- G) In the event that during the Project, an emergency situation should occur, such as a natural disaster, which represents an immediate threat to public health, safety, life, or property creating a hazardous condition in relation to a historic property, the City shall notify FTA, ACHP, and SHPD of the conditions which has initiated the situation and the measures to be taken to respond to the emergency or hazardous condition. The FTA and SHPD may submit additional measures to resolve adverse effects within seven days of the notification. Should the nature of the emergency warrant immediate attention, the City shall consult with the FTA and SHPD via telephone or e-mail. Should the SHPD or the FTA desire to provide technical assistance to the City in responding to such condition, they shall submit comments within five days from notification, if the nature of the emergency or hazardous conditions allows for such coordination.
- H) In the event that the City or other agency applies for additional federal funding or approvals for the Honolulu High-Capacity Transit Corridor Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this MOA and notifying and consulting with SHPD and ACHP. Any necessary modifications will be considered in accordance with Stipulation XII.I.
- I) Amendments
 - 1. Any signatory to this PA may request that any term or stipulation of this PA be amended, whereupon the signatories to the PA shall consult with each other in accordance with 36 CFR 800 to consider such amendment. Any amendment must be agreed to in writing by all signatories. The amendment will be effective on the date a copy with all signatures is sent to the ACHP.

If an amendment cannot be agreed upon, the signatory proposing the amendment may invoke the dispute resolution process set forth in Stipulation XII.A.

- J) Termination: Any signatory may terminate this PA upon written notification to the other signatories. If the PA is terminated, all work affecting any historic resource shall cease until FTA either: (1) executes a new agreement pursuant to 36 CFR 800.6; or (2) requests, considers, and responds to comments of the ACHP under 36 CFR 800.7. FTA shall notify the signatories as to the course of action it will pursue.

This PA may be terminated by the execution of a subsequent agreement that explicitly terminates this PA or supersedes its terms.

DRAFT

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION

By: _____
Leslie Rogers
Regional Administrator

Date

HAWAI'I STATE HISTORIC PRESERVATION OFFICER

By: _____
Laura Thielen
Chairperson of Department of Land and Natural Resources

Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date

INVITED SIGNATORIES:

CITY AND COUNTY OF HONOLULU

By: _____
Wayne Y. Yoshioka
Director, Department of Transportation Services

Date

NATIONAL PARK SERVICE

By: _____
Regional Administrator
National Park Service

Date

CONCURRING PARTIES:

By: _____
NAME

Date

ATTACHMENT 1: APE for historic resources; APE for archaeological resources

ATTACHMENT 2: Information on Resources with Adverse Effect Determinations

DRAFT